

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549**

**FORM 8-K
CURRENT REPORT**

**PURSUANT TO SECTION 13 OR 15(d) OF THE
SECURITIES EXCHANGE ACT OF 1934**

**Date of Report (Date of earliest event reported):
October 26, 2005**

BANK OF AMERICA CORPORATION

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of incorporation or organization)

1-6523
(Commission File Number)

56-0906609
(IRS Employer Identification No.)

**100 North Tryon Street
Charlotte, North Carolina**
(Address of principal executive offices)

28255
(Zip Code)

(888) 279-3457
(Registrant's telephone number, including area code)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- ☐ Written communications pursuant to Rule 425 under the Securities Act.
 - ☐ Soliciting material pursuant to Rule 14a-12 under the Exchange Act.
 - ☐ Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act.
 - ☐ Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act.
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Item 1.01. Entry into a Material Definitive Agreement.*Cancellation Agreement*

In connection with the execution of the merger agreement between FleetBoston Financial Corporation (“FleetBoston”) and Bank of America Corporation (the “Registrant”), the Registrant entered into a three-year employment agreement with Brian T. Moynihan. This employment agreement became effective upon completion of the merger on April 1, 2004 and was to continue in effect until April 1, 2007. However, at the request of Mr. Moynihan, on October 26, 2005 Mr. Moynihan entered into a Cancellation Agreement (the “Cancellation Agreement”) with the Registrant pursuant to which the employment agreement was canceled effective October 26, 2005. In accordance with the Cancellation Agreement, Mr. Moynihan has no further rights to any severance or other benefits under the employment agreement, except that he continues to have the right to receive a tax gross-up payment under certain circumstances if an excise tax is imposed under Section 4999 of the Internal Revenue Code of 1986, as amended, as a result of the FleetBoston merger. Under the employment agreement, the Registrant established a deferred compensation account for Mr. Moynihan and granted Mr. Moynihan certain restricted stock units (as described in the footnotes to the Summary Compensation Table of Registrant’s proxy statement for the 2005 Annual Meeting of Stockholders), which amounts represented the cash severance that would have been payable under Mr. Moynihan’s prior change in control agreement with FleetBoston determined as of April 1, 2004. In connection with the cancellation of the employment agreement, these vested amounts will be paid out as soon as administratively practicable after the cancellation.

A copy of the Cancellation Agreement is filed with this report as Exhibit 10.1 and is incorporated herein by reference.

Agreement Regarding Participation in the FleetBoston Supplemental Executive Retirement Plan

Mr. Moynihan participates in the FleetBoston Financial Corporation Supplemental Executive Retirement Plan (the “Fleet SERP”). Consistent with Bank of America’s pay-for-performance philosophy and at Mr. Moynihan’s request, on October 26, 2005 Mr. Moynihan entered into an Agreement Regarding Participation in the FleetBoston Supplemental Executive Retirement Plan (the “SERP Agreement”) with the Registrant pursuant to which his participation in the Fleet SERP will be frozen effective December 31, 2005. In accordance with the SERP Agreement, no further benefits will accrue for Mr. Moynihan under the Fleet SERP for compensation or service after December 31, 2005. Prior to being frozen, the Fleet SERP provided a target retirement benefit for Mr. Moynihan expressed as a percentage of final average compensation, offset by benefits from the FleetBoston tax-qualified pension plan and pension restoration plan. Under the terms of the SERP Agreement, Mr. Moynihan will be eligible to receive the portion of his Fleet SERP benefit accrued through December 31, 2005 following his retirement in the form of a joint and 75% survivor annuity. The annual amount of the frozen Fleet SERP benefit as of December 31, 2005, expressed as a joint and 75% survivor annuity commencing at age 60, equals \$613,708. Additionally, under the terms of the SERP Agreement, Mr. Moynihan may elect actuarially equivalent lump sum, installment and life annuity payment options.

A copy of the SERP Agreement is filed with this report as Exhibit 10.2 and is incorporated herein by reference.

Item 1.02. Termination of a Material Definitive Agreement.

The information contained in “Item 1.01—Cancellation Agreement” is incorporated herein by reference.

Item 9.01. Financial Statements and Exhibits.

(d) Exhibits.

Exhibit No.	
10.1	Cancellation Agreement dated October 26, 2005 between Bank of America Corporation and Brian T. Moynihan
10.2	Agreement Regarding Participation in the FleetBoston Supplemental Executive Retirement Plan dated October 26, 2005 between Bank of America Corporation and Brian T. Moynihan

SIGNATURE

Pursuant to the requirements of the Securities Exchange Act of 1934, as amended, the Registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

BANK OF AMERICA CORPORATION

By: /s/ Ellen Perrin

Ellen Perrin

Assistant General Counsel

Dated: October 26, 2005

EXHIBIT INDEX

Exhibit No.	Description of Exhibit
10.1	Cancellation Agreement dated October 26, 2005 between Bank of America Corporation and Brian T. Moynihan
10.2	Agreement Regarding Participation in the FleetBoston Supplemental Executive Retirement Plan dated October 26, 2005 between Bank of America Corporation and Brian T. Moynihan

CANCELLATION AGREEMENT

THIS CANCELLATION AGREEMENT (the "Agreement") is made and entered into as of the 26th day of October, 2005, by and between Brian T. Moynihan ("Executive") and Bank of America Corporation, a Delaware corporation (the "Bank of America").

Statement of Purpose

Executive has been employed by the Corporation pursuant to that certain Employment Agreement dated October 27, 2003 and effective as of April 1, 2004 in connection with Bank of America's merger with FleetBoston Financial Corporation (the "Employment Agreement"). The Employment Agreement is currently scheduled to expire effective April 1, 2007. At Executive's request, the parties have determined to cancel the Employment Agreement effective as of the date hereof in accordance with the terms of this Agreement.

NOW, THEREFORE, in consideration of the foregoing statement of purpose and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Cancellation of Employment Agreement. The Employment Agreement is cancelled effective as of the date hereof, provided that the provisions of Section 8 (regarding certain excise tax gross-up payments) and Section 9 (regarding protection of Bank of America's "Confidential Information") of the Employment Agreement shall remain in effect. In that regard, from and after the date hereof, as is the case with associates within Bank of America and its subsidiaries generally, Executive shall have the right to terminate his employment at any time with or without cause or notice, and Bank of America reserves for itself an equal right.

2. Payment of Deferred Amount and Restricted Stock Units. Pursuant to Section 3(b)(v) of the Employment Agreement, Bank of America established a deferred compensation account (the "Deferred Amount") and granted Executive certain restricted stock units (the "Restricted Stock Units") that together represented the amount of cash severance that Executive would have otherwise been entitled to receive under Executive's prior change of control agreement with FleetBoston Financial Corporation. In accordance with the Employment Agreement, the Deferred Amount and Restricted Stock Units were fully vested and payable upon termination of employment. In connection with the cancellation of the Employment Agreement as provided hereunder, the balance of the Deferred Amount as of the date hereof and the Restricted Stock Units shall be payable to Executive on or as soon as administratively practicable after the date hereof.

3. Miscellaneous.

(a) Conditions. This Agreement shall not become effective or enforceable unless and until it has been approved by the Compensation Committee of the Board of Directors of Bank of America.

(b) Entire Agreement. This Agreement contains the entire agreement between Bank of America and Executive with respect to the subject matter hereof, and no amendment, modification or cancellation hereof shall be effective unless the same is in writing and executed by the parties hereto (or by their respective duly authorized representatives).

(c) Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto, and their respective heirs, executors, administrators, legal representatives, successors and assigns, if any.

(d) Multiple Originals. This Agreement is executed in multiple originals, each of which shall be deemed an original hereof.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date first above written.

BANK OF AMERICA CORPORATION

By: /s/ J. Steele Alphin

Name: J. Steele Alphin

Title: Corporate Personnel Executive

“Corporation”

/s/ Brian T. Moynihan

Brian T. Moynihan

“Executive”

**AGREEMENT REGARDING PARTICIPATION IN THE
FLEETBOSTON SUPPLEMENTAL EXECUTIVE RETIREMENT PLAN**

THIS AGREEMENT (the "Agreement") is made by and between Bank of America Corporation, a Delaware corporation ("Bank of America"), and Brian T. Moynihan ("Executive").

Statement of Purpose

Executive participates in the FleetBoston Financial Corporation Supplemental Executive Retirement Plan (the "SERP"). The parties desires to amend the SERP as to Executive's participation thereunder to provide for the cessation of additional benefit accruals for Executive with respect to compensation and service for periods beginning after December 31, 2005.

NOW, THEREFORE, in consideration of the premises and mutual covenants contained herein, Bank of America and Executive do hereby agree as follows:

1. SERP Amendment. The SERP is hereby amended with respect to Executive's participation thereunder effective as of the date hereof by the addition of a new Subsection C to Appendix A of the SERP as follows:

"C. Cessation of Benefit Accruals

1. Background: Provisions Controlling. The Company and Brian T. Moynihan ("Executive") have determined to cease additional benefit accruals under the Plan with respect to Executive's Compensation and Credited Service for periods beginning after December 31, 2005. The purpose of this Subsection C is to set forth the terms and conditions of such cessation of benefit accruals, including without limitation setting forth (i) the amount of the benefit accrued under the Plan for Executive as of December 31, 2005 (the "Frozen SERP Benefit") and (ii) the terms and provisions for the payment of such Frozen SERP Benefits following a subsequent termination of employment with the Company. The provisions of this Subsection shall control notwithstanding any provision of the Plan to the contrary.

2. Amount of Frozen SERP Benefit as of December 31, 2005. Executive's Frozen SERP Benefit as of December 31, 2005 shall be expressed as a monthly retirement benefit in the form of a joint and seventy-five percent (75%) survivor annuity commencing as of the first day of the month after attaining age sixty (60) (Executive's "Normal Retirement Date" for purposes of this Subsection) in an amount equal to Six Hundred Thirteen Thousand Seven

Hundred Eight Dollars (\$613,708) per month, which Executive acknowledges equals the amount of Executive's benefit under the Plan based on Executive's Compensation (taking into account the target amount of Executive's annual incentive award for performance during 2005) and Credited Service as of December 31, 2005 and estimated offsets for benefits accrued through December 31, 2005 under the Basic Plan and Retirement Income Assurance Plan.

3. Payment of Frozen SERP Benefits

(a) Normal Form of Payment. Payment of Executive's Frozen SERP Benefit shall be in the form of a joint and seventy-five percent (75%) survivor annuity if Executive is married on the date of termination of employment, or an actuarially equivalent ten-year certain and life annuity if Executive is not married on the date of termination of employment.

(b) Commencement. Subject to the provisions of Paragraph 3(c) of this Subsection, payment of Executive's Frozen SERP Benefit shall commence in the applicable normal form of annuity as of the first day of the month following the date of Executive's termination of employment with the Company, subject to the following adjustments for early or late commencement:

Adjustments for Early Commencement. If Executive's Frozen SERP Benefit is to commence before Executive's Normal Retirement Date, then the amount of the Frozen SERP Benefit shall be actuarially reduced to reflect the early commencement of such benefits.

Adjustments for Late Commencement. If Executive's Frozen SERP Benefit is to commence after Executive's Normal Retirement Date, then the amount of the Frozen SERP Benefit shall be actuarially increased to reflect the delayed commencement of such benefits.

(c) Optional Forms of Payment. In addition to the actuarially equivalent annuity options otherwise available under the Basic Plan, Executive may elect in accordance with the provisions of this subparagraph (c) one of the following optional forms of payment for Executive's Frozen SERP Benefit:

- (i) a single lump sum payment;
- (ii) five (5) annual installments; or
- (iii) ten (10) annual installments.

The amount of a single lump sum payment shall be determined as follows depending on whether termination of employment occurs before or after Executive's Normal Retirement Date:

Termination Before Normal Retirement Date. If the date of Executive's termination of employment occurs before Executive's Normal Retirement Date, the amount of the lump sum payment shall be equal to the actuarially equivalent present value of Executive's Frozen SERP Benefit determined as of the date of termination of employment assuming Executive's Frozen SERP Benefit is payable in the form of a deferred annuity commencing at Executive's Normal Retirement Date.

Termination On or After Normal Retirement Date. If the date of Executive's termination of employment occurs on or after Executive's Normal Retirement Date, the amount of the lump sum payment shall be equal to the actuarially equivalent present value of Executive's Frozen SERP Benefit determined as of the date of termination of employment assuming Executive's Frozen SERP Benefit is payable in the form of an immediate annuity.

The amount of installment payments shall be based on the lump sum amount of the Frozen SERP Benefit as set forth above amortized as equal annual payments over the applicable payment period using for such purpose the interest rate specified in Paragraph 5 of this Subsection.

The single cash payment or initial installment payment, as applicable, shall be made as soon as administratively practicable after Executive's date of termination of employment, and each subsequent installment payment (if applicable) shall be made on or around the anniversary of the first payment date.

An election for lump sum or installment form of payment under this subparagraph (c) shall be made on or before December 31, 2005, and shall be immediately effective. Executive may change the form of payment elected under this subparagraph (c), provided that (i) such election is made at least twelve (12) months prior to the date the payment would have otherwise commenced, (ii) the effect of such election is to defer commencement of such payments by at least five (5) years and (iii) such election does cause an acceleration of any portion of the payments.

To be effective, any election under this subparagraph (c) shall be made on such form, at such time and pursuant to such procedures as determined by the Personnel Group of the Company in its sole discretion from time to time.

4. Death Benefits.

(a) Death After Commencement of Benefits. If Executive dies after having commenced payment of Executive's Frozen SERP Benefit, then payment of any benefits after such death shall be determined in accordance with the method of payment in effect. In that regard, if Executive was receiving installment payments under Paragraph 3(c) of this Subsection immediately prior to death, the remaining unpaid installments shall continue to be paid to Executive's designated beneficiary.

(b) Death Before Commencement of Benefits. If Executive dies before having commenced payment of Executive's Frozen SERP Benefit, then the actuarially equivalent present value of Executive's Frozen SERP Benefit determined as of the date of death shall be payable to Executive's designated beneficiary in a single lump sum payment as soon as administratively practicable after death. However, Executive may elect in accordance with such procedures as the Personnel Group of the Company may establish from time to time to have such death benefits payable to Executive's designated beneficiary in five (5) or ten (10) annual installments (with the amount of each installment determined in accordance with the provisions of Paragraph 3(c) above) or in an actuarially equivalent single life annuity on the life of the designated beneficiary.

5. Actuarial Equivalency. For purposes of this Subsection, all determinations of actuarial equivalency shall be based on the following mortality and interest assumptions:

Mortality: 1994 GAR Unisex Mortality Table

Interest: 4.90% per annum, compounded annually"

2. Miscellaneous.

(a) Conditions. This Agreement shall not become effective or enforceable unless and until it has been approved by the Compensation Committee of the Board of Directors of Bank of America.

(b) Entire Agreement. This Agreement contains the entire agreement between Bank of America and Executive with respect to the subject matter hereof, and no amendment, modification or cancellation hereof shall be effective unless the same is in writing and executed by the parties hereto (or by their respective duly authorized representatives).

(c) Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto, and their respective heirs, executors, administrators, legal representatives, successors and assigns, if any.

(d) Multiple Originals. This Agreement is executed in multiple originals, each of which shall be deemed an original hereof.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, Bank of America has caused this instrument to be executed by its duly authorized officer, and Executive has hereunto set his hand, all on the 26th day of October, 2005.

BANK OF AMERICA CORPORATION

By: /s/ J. Steele Alphin

Name: J. Steele Alphin

Title: Corporate Personnel Executive

“Bank of America”

/s/ Brian T. Moynihan

Brian T. Moynihan

“Executive”